



Planning Board – Town of Spencer

Minutes

Planning Board Meeting **Tuesday, November 18, 2014 at 7:00 PM** McCourt Social Hall Memorial Town Hall

Planning Board Members Present: Chair James Whalen, Shirley Shiver, Robert Ceppi, and Jonathan Viner

Planning Board Members Absent: None

Staff Present: Michelle Buck, Town Planner, Monica Santerre-Gervais ODIS Clerk

Staff Absent: None

Mr. Whalen opens the meeting at 7:02pm.

1. ANR Plans –

Paxton Road & Donnelly Road, David Simonis

Richard Para present to discuss the plan. The plan divides existing property into 3 lots (Lots 3, 4, and remaining land). David Simonis owns the land; the plan meets the frontage and zoning requirements. The additional plans that were submitted with the application were all the plans prior to 2004.

Mr. Viner asked about surveying and existing monuments.

Mr. Para said there are a couple of existing monuments that are not on the plan. The monuments were not on the submitted plan because the Town Hall does not have convenient hours and he wanted to get the plans in before the deadline.

Mr. Ceppi mentioned the condition to the motion could be that Mr. Para submits a new mylar with the existing monuments.

MOTION: Ms. Shiver makes a motion to approve and endorse this ANR and submit a new mylar with the monuments.

SECOND: Mr. Viner

DISCUSSION: None

VOTE: 4-0 in favor

2. Public Informational Meeting – Request for Zoning Bylaw Amendment, re: Tattoo Parlors

Brydi Ricard was present for the meeting.

Mr. Whalen reviewed with the applicant the amendment to change the current Zoning Bylaws to allow tattoo parlors in the Town Center (TC) zoning district. Also it was explained that there

would be no decision made at this meeting and if the Planning Board did want to endorse this request then they would need to draft a letter and then submit an article for the Town Meeting in the spring.

Ms. Buck summarized current Zoning Bylaws. Currently, this use is allowed only in the Commercial (C) district by special permit, and is prohibited in all other zoning districts. In addition, the Zoning Bylaw has the following restrictions in Section 4.3.20:

4.3.20 Tattoo parlors or body piercing studios (E-24) are permitted provided:

- A. The parcel upon which they are located is at least 400 feet from any residential zoning district or town boundary and at least 1,000 feet from any school, childcare facility, public playground, Public Park or recreational facility, library, church or other religious use.
- B. There shall be no display of any materials which meet the definition of sexual conduct or sexual excitement in MGL Ch 272 Sec 31 in any location, interior or exterior, that are visible to the public from any public areas outside of the business.
- C. Under no circumstances shall a tattoo parlor or body piercing studio be permitted as a home business, customary home occupation, or home-based contractor.

The Bylaw section 4.3.20 would have to be significantly amended, in particular subsection A (setbacks from various uses), to allow tattoo parlors in the Town Center district. Ms. Buck brought with her the map of the Zoning setbacks they used for the Medical Marijuana consideration and discussed where the restricted uses are in the Town Center district. With the Planning Boards approval they would need to amend the buffers.

Mr. Whalen asked if anyone from the public wanted to have any discussion on the Tattoo Parlor amendment.

Ms. Brydi brought with her signed petitions that she received online as well as locally. Her online petition received 39 signatures and her local petition for Spencer residents had 205 signatures and 22 of those signatures were from Town Center district residents.

Mr. Whalen appreciated Ms. Brydi's submission of her petition and said that he felt it gave the Planning Board a good idea on how the Town felt about this application. Mr. Whalen spoke to Board of Selectmen as well as new State Representative, Donnie Berthiaume, and they are okay with the Tattoo amendment going forward.

Ms. Shiver explained that the Planning Board only drafts a request to the Board of Selectmen and then if the Board of Selectmen approves the draft it will go to Town Meeting and would need to get voted on by the Town of Spencer. Also, Ms. Shiver explained she would not want to give the applicant false hope by such positive comments.

Ms. Buck clarified that there would need to have another advertised public hearing. This meeting was to see if the Planning Board wants to sponsor the amendment. If the Planning Board does not want to sponsor the amendment then the applicant would need to go and submit a draft to the Selectmen.

Mr. Viner mentioned that he would support getting rid of the offsets in all the districts. He would also support limited advertisement and signage.

Mr. Ceppi asked if there are other Bylaws they should be changing and the Planning Board could make a complete package submittal. Mr. Whalen doesn't feel that submitting everything as a package is a good idea. Mr. Ceppi still feels the Planning Board should get together and look at other Bylaws for example the driveway bylaws. They could submit the changes separately so they don't get voted on together. Ms. Buck asked if Mr. Ceppi was suggesting that they make a Planning Board subcommittee. Mr. Ceppi explained that the Planning board should just submit any other changes to the Bylaws that they seem fit and that way it will be voted on at the next Town Meeting.

Mr. Whalen and Ms. Buck discussed how they would amend the Bylaw to address Ms. Ricard's request. This would be a relatively simple amendment unless the Planning Board wants something more specific. Mr. Viner asked if this was something they needed to do for other districts and would it be for a special permit. Ms. Buck explained the bylaw already requires a special permit for this use.

Charlene Stavros, 52 Chestnut Street, is currently the mother and owner of where the applicant would like to have the tattoo parlor. Currently, the address is a Bar Room, a Salon, and it has apartments and she said that Chestnut Street has always been a commercially zoned property. Ms. Stavros doesn't understand why Ms. Ricard has to have a Special Permit to have the tattoo parlor. Mr. Whalen explained that because of the way the Bylaws were written the applicant doesn't adhere to the setback requirements. Ms. Stavros went on to comment on how the Town of Spencer hasn't updated their Bylaws and that people don't want to do business in Spencer and, therefore, the surrounding towns get more business. Mr. Whalen explained that the Planning Board has taken that into consideration and are trying to address getting more businesses into Spencer. Ms. Shriver explained that they overhauled the Bylaws eight years ago and there was a Downtown Main Street Study done five years ago and the Town is looking to have Main Street redone as well as Pleasant Street. Ms. Shriver also explained that during those studies they have found that the economics of Spencer are very good and looking to grow Spencer. Mr. Whalen also mentioned that during the last meeting they had a study done in regards to parking for downtown and how the Selectmen are making more of an investment on trying to rehab buildings to make downtown Spencer more attractive. Mr. Whalen personally feels the applicant has come in at a good time but changes take time. Mr. Whalen is still waiting for responses on the Board of Selectmen; Chris Woodbury had planned to attend this meeting but got held up.

Ms. Buck asked if the Planning Board wants to sponsor the amendment. Mr. Ceppi and Mr. Viner would want to sponsor the amendment; however, Ms. Shriver is neutral. Mr. Whalen feels that since the applicant had gone through the trouble of getting the petitions signed and submitting them then he would feel comfortable sponsoring this amendment and recommends putting it on the next Planning Board meeting agenda. Mr. Ceppi feels they shouldn't rush the decision and aim for the January meeting. Ms. Buck will have a draft ready for the December meeting for the Planning Board to review.

Ms. Shiver asked what changes would need to be amended the buffer or Town Center. Ms. Buck said that both would need to be amended. Mr. Ceppi said it makes sense to have the tattoo parlor in Town Center and not in the Industrial part.

Ms. Brydi asked the Board Members if they were going to sponsor the amendment. Mr. Whalen told her that Ms. Buck to draft a document for December 2014 for the public hearing in January 2015. The Planning Board would vote the draft on whether or not it would go to Town Meeting.

Ms. Buck said that it does make sense to have all Zoning Bylaw amendments discussed at a single public hearing. However, she would not be able to have the driveway bylaw ready in time for a January public hearing because that is a more complicated amendment. Ms. Buck said they public hearings would be somewhere between January and March 2015.

Ms. Brydi asked to be notified for any hearings and meetings. Mr. Whalen said it would also be in the newspaper as a legal ad and Ms. Buck will continue the communication with the applicant.

This was an informational meeting and therefore there were no motions.

3. Public Hearing – Amendment to an approved definitive subdivision plan – Sunset Holmes, Applicant/Owner: James Laney/ 123 KIDS, LLC, Location: off Sunset and Greenville Road, Spencer (Assessors Map U04, U06 & Map R28). The applicant is requesting an extension of deadlines related to this subdivision. This subdivision plan was originally approved by the Planning Board on December 6, 2005.

Mr. Whalen opened the meeting at 7:40 pm.

David Bennett, Lawyer representing James Laney of 123 Kids, LLC, was present. He explained that Mr. Laney is asking for an extension of the deadlines related to the subdivision due to the economy. The original developer deeded the land in 2009 to the bank and Mr. Laney bought the property for \$500,000.00 in 2010. Currently, there is only one house on one lot. The project is at a loss and the new road bond estimate for \$363,000.00 is too high and they do not agree that it will cost that much to complete the road. Mr. Laney has a Letter of Credit for the lower amount of \$118,000.00 that was quoted in 2011. Mr. Bennett explained that Mr. Laney's current plan is to reduce the scope of the project by revisiting the requirements of the road and trying to terminate the Sunset Lane extension. Currently, all of Holmes Street and the cul-de-sac are paved. Mr. Laney may eliminate Sunset Lane that way he would only need to complete Holmes Street and possibly eliminate the cul-de-sac.

Ms. Buck explained the surety is on Phase 1 not Phase 2. The cul-de-sac is on Holmes Street not Sunset Lane.

Mr. Whalen asked if the estimate for the road was for both phases and Ms. Buck explained it is only for the Phase 1 of the project.

Mr. Bennett explained that if you take a drive by to see the road you will notice that the road is safe, wider than Sunset Lane and the drainage is in. The lighting is not in but there is no urgency in getting the road done immediately. They understand the town wants the road completed but

Mr. Laney needs some relief and Mr. Laney cannot get a line of credit for the new estimate of \$363,000.00.

Mr. Whalen asked if Mr. Laney is proposing to stop the work. Mr. Bennett explained that Mr. Laney is requesting an extension for one year. Mr. Laney is working with Kevin Quinn of Quinn Engineering firm to advise on constructing the road and to evaluate the cost. Mr. Laney was waiting on the economy to come back and now will work diligently on getting the road done.

Ms. Buck mentioned the possibility of using a Covenant to reduce the large bonding surety. A Covenant would stipulate that the applicant cannot build on anymore lots until the road is completed. Mr. Bennett mentioned that Mr. Laney doesn't own lot 17, and that he believes there is a lot that has a building limitation. Ms. Buck believes it is lot 2. Mr. Laney said that it is lot 2 and it needed conservation work.

Mr. Whalen opens the hearing to the public.

Richard Kirk, 22 Holmes Street (the first abutter), wanted to know about the two detention ponds on lot 1 and 5 doesn't believe these are done properly. Mr. Kirk's property abuts lot 1 and he said the pond needs to be reconfigured because he is getting a lot of water in his home from the pond. Tension #3 water flows into his land. Mr. Whalen told Mr. Kirk that an Engineer who reevaluated detention basin number 3 noted that the berm is eroded and water appears to travel the basin into the wetlands. Mr. Kirk said that was towards his home. Mr. Kirk also wanted to know what Mr. Laney is going to finish. Mr. Laney answered to extend the plan of Phase 1. Mr. Kirk wants to know how Mr. Laney gets approved. Mr. Ceppi explained that the purpose of the meeting was for Mr. Laney to get the extension in order to finish Phase 1. However, Mr. Laney said he will be proposing some changes. Mr. Kirk asked how he would go about getting those changes. Mr. Ceppi explained Mr. Laney would have to do a re-submittal of the changes with a new plan and it would come back to the Planning Board for approval. Mr. Kirk wanted to know how many extensions this project has been granted. Ms. Buck answered that there have been three prior deadline extensions and then the Permit Extension Act gave them an additional four years, for a total of seven years.

Ms. Shiver asked when they first approved the subdivision. Ms. Buck said it was in 2005. Ms. Buck also pointed out that in the original decision the applicant needed to maintain a \$5,000.00 balance for inspections and reviews. Ms. Buck pointed out that Mr. Laney is not maintaining the \$5,000.00 balance per the original decision made in 2005. Mr. Whalen inquired if the reasoning for not maintaining the balance had to do with the issue of the road bond estimate. Mr. Bennett said that was part of the issue but Mr. Laney needs to pay the money. Mr. Laney said he will pay the amount after a real estate closing on one of his properties next week.

Mr. Bennett said that going back to Ms. Buck's suggestion of having the \$118,000.00 and in addition having the Covenant that they would have no objections to doing that. Mr. Ceppi asked Mr. Quinn if he has had a chance to review Lenard's estimate. Mr. Quinn had not had a chance to review yet. Ms. Shiver asked Mr. Bennett if he agreed with the issues they found with the road pertaining to sidewalks and cracks. Mr. Bennett said they have issues with the list of areas where it says the road needs to be dug up and redone and they feel the road just needs to be

patched. Mr. Bennett said they received an estimate from Harrison Paving for \$48,000.00 to do the finish coat and raise the manhole. Ms. Shiver pointed out that Lenard Engineering put their labor in with prevailing wage rates and 10% construction administration fees. Ms. Buck noted that the estimate was reviewed by Steve Tyler, Director of Utilities & Facilities, and if they want the road accepted as a public way it needs to be approved by Mr. Tyler. Mr. Laney said he knows Mr. Tyler and wouldn't do anything without Mr. Tyler's approval. Ms. Shiver encourages Mr. Laney to go back out with Mr. Tyler to review what needs to be done from his perspective. Ms. Buck said Mr. Tyler did review the numbers and he increased Lenard's original estimate. Mr. Bennett said that they agree with the Covenant so they will have the lots for the additional surety and to show they are willing to make the necessary improvements. Ms. Shiver thinks this is the best solution since they have been having the same issues with other subdivisions. Ms. Buck mentioned she would not recommend if the most of the lots were occupied (there's only one).

Ms. Shiver asked about extending the subdivision and the plans for the future and inquired if Mr. Laney would be doing rental units such as duplexes, apartments, or affordable housing. Mr. Bennett said that was the reasoning for them contacting Mr. Quinn and see if there is any way to salvage the project because as of now they are losing money.

Mr. Ceppi asked what they feel is a good number to repair the road. Mr. Laney said it's a question he would have to ask the bank and what they are willing to give him credit for. Mr. Quinn mentioned he is going over the numbers. Planning Board discussed continuing the hearing to December 2014. Ms. Shiver would like the applicant to bring with him items to address in order to get the roads fixed. Mr. Laney said he will work on getting the road completed, however, until the market picks up he does not plan on building on anymore lots. Ms. Shiver feels that they wouldn't want to keep granting extensions if nothing is ever going to get built. Mr. Laney said eventually something will happen but he wants to focus on the road. Mr. Laney wants Phase 1 to be completed and doesn't think there will be a Phase 2.

Mr. Ceppi said the Planning Board should come up with some solution so that the applicant can complete the road. Mr. Whalen said he would support a 30 day extension so that Mr. Laney can speak to the bank and Mr. Quinn can review the numbers from Lenard's estimate. Mr. Bennett agreed to the 30 day extension and will come back to the Planning Board with some numbers. Mr. Viner asked if the numbers should be submitted before the meeting. Ms. Shiver said Steve Tyler should be involved to give feedback on the numbers submitted.

Ms. Buck said that the new numbers should be submitted two weeks before the meeting. Mr. Laney will try to get the numbers in before the meeting and he is planning on meeting with Mr. Tyler. Mr. Whalen feels it's important to get comments from Mr. Tyler. Ms. Shiver pointed out that the abutter that came in about the berm and water in their yard that Mr. Laney should make those issues a priority to fix.

MOTION: Mr. Ceppi makes the motion to continue the public hearing to the December meeting and grant a 30 day extension.

SECOND: Ms. Shiver seconds and amends the motion to add that the remaining lots (1, 2, 3, 5, 15, 16, and 17) go under Covenant / Mr. Viner seconds the amendment

DISCUSSION: Bonding estimate and covenant.

VOTE: 4-0

4. Public Hearing, Major Site Plan Review, Meadow Solar

Mr. Whalen reopened the continued public hearing at 8:11 pm for the Meadow Solar Farm.

Ms. Buck mentioned that there is a lot of work that has to be done on the applicant's part. Also, the applicant has still not filed his application with the DEP.

Mr. Ceppi mentioned that he attended the Conservation Commission meeting in October and he felt they were being difficult with ECOS Energy.

Mr. Whalen suggested a motion to continue the hearing.

Ms. Buck mentioned that the Zoning Board of Appeals voted on the fence being 6" above ground, 6 or 7 feet high and chain link. ZBA members felt that there should be a consistent requirement (the other solar projects all have chain link). The Planning Board members were okay with the fence conditions. There was some discussion about the fence height requirement and how other Solar Farms increased fence height from six to seven feet.

MOTION: Ms. Shiver motioned to continue the public hearing to December 16, 2014.

SECOND: Mr. Ceppi seconds the motion.

DISCUSSION:

VOTE: 4-0 in favor.

5. Discussion, Associate Planning Board Vacancy (Maria Reed)

Maria Reed, 6 Pond Road, is currently a realtor with RE/MAX in Worcester, MA. Ms. Reed has been a licensed real estate agent for awhile and finds serving on a board to be interesting. Ms. Reed's husband, Dana Reed, is on the Conservation Commission and she would like to volunteer and help her community.

Mr. Whalen asked if Ms. Reed had any questions for the Planning Board. Ms. Reed was concerned about the time she could commit to the Planning Board and the responsibilities to be on the Planning Board.

Ms. Shiver explained that she would need to take ethics training and may need to recuse herself from some projects because she is a real estate agent. At times there are Zoning Bylaw changes and review of ANR plans. There was much discussion about the Planning Board responsibilities and the time it takes to review the packages for the meetings. Ms. Reed was unsure if she wants to be on the Planning Board and wanted to take some time to think it over. Planning Board members indicated that that was okay and if she chooses to be on the Planning Board then they would welcome her.

MOTION: Mr. Ceppi motions to accept Ms. Reed on the Planning Board is she wants the position.

SECOND: Ms. Shiver seconds and amends the motion to state that the Board recommends appointment by Town Administrator Adam Gaudette.

DISCUSSION: None

VOTE: 4-0

6. Adoption of Minutes

Mr. Whalen has one change on the October 21, 2014 meeting, on the vote for Laurelwood Phase 2 hearing; he abstained from voting not recused.

- August 19, 2014

MOTION: Ms. Shiver motioned to accept the minutes.

SECOND: Mr. Ceppi

DISCUSSION: None

VOTE: 4-0

- September 2, 2014

MOTION: Ms. Shiver motioned to accept the minutes.

SECOND: Mr. Viner

DISCUSSION: None

VOTE: 4-0

- October 21, 2014

MOTION: Ms. Shiver accepts the minutes with the changes Mr. Whalen addressed.

SECOND: Mr. Viner

DISCUSSION: None

VOTE: 4-0

7. Town Planner Report/ General Board Discussion

Treadwell solar project discussion has been postponed to the December 2014 meeting.

MOTION: Ms. Shiver motions to adjourn the meeting at 8:40 pm.

SECON: Mr. Ceppi

DISCUSSION: None

VOTE: 4-0 in favor.

Submitted by: Monica Santerre-Gervais ODIS Clerk

Approved by the Planning Board on: 12/16/2014

List of Documents used on November 18, 2014

Items sent to Planning Board prior to Meeting

Mailed paper copies:

- Agenda
- Memo from Michelle Buck to Planning Board Dated 11/12/2014
- ANR- Paxton Road & Donnelly Road, David Simonis
- Public Hearing Sunset Holmes: Lenard Engineering Letter sent to the Planning Board on November 12, 2014. Continued Public Hearing:
- Public Hearing Meadow Solar: Memo from ECOS Energy to Michelle Buck dated November 4, 2014, Email from Steve Broyer from ECOS Energy to Michelle Buck dated November 5, 2014
- Application Letter to fill , Associate Planning Board Member opening (Maria Reed)
- Minutes for August 19, 2014, September 2, 2014, and October 21, 2014

Items submitted at the Meeting:

- Definitive Subdivision Plan for Sunset-Holmes